

NEVADA

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N.R.S. 704.330

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TEXT

NEVADA REVISED STATUTES
TITLE 58. PUBLIC UTILITIES AND SIMILAR ENTITIES
CHAPTER 704. REGULATION OF PUBLIC UTILITIES GENERALLY
REGULATION OF PUBLIC UTILITIES
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

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Current through 1997 Reg. Sess., adj. July 7, 1997.

704.330 Public utility to obtain certificate of public convenience or necessity; exceptions; terms and conditions; orders to cease and desist; duplication of service.

1. Every public utility owning, controlling, operating or maintaining or having any contemplation of owning, controlling or operating any public utility shall, before beginning such operation or continuing operations or construction of any line, plant or system or any extension of a line, plant or system within this state, obtain from the commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction.

2. Nothing in this section requires a public utility to secure such a certificate for any extension within any town or city within which it lawfully commenced operations or for any other extension as long as the extension:

(a) Is to serve a telephone toll station or stations to be located not more than 10 miles from existing telephone facilities; or

(b) Remains within the boundaries of the service area which have been established by the commission for its railroad, line, plant or system, and not then served by a public utility of like character.

3. Upon the granting of any certificate of public convenience, the commission may make such an order and prescribe such terms and conditions for the location of lines, plants or systems to be constructed, extended or affected as may be just and reasonable.

4. When a complaint has been filed with the commission alleging that any utility is being operated without a certificate of public convenience and necessity as required by this section, or when the commission has reason to believe that any provision of this section is being violated, the commission shall investigate such operations and the commission may, after a hearing, make its order requiring the owner or operator of the utility to cease and desist from any operation in violation of this section. The commission shall enforce compliance with such an order under the powers vested in the commission by law.

5. If any public utility in constructing or extending its line, plant or system interferes or is about to interfere with the operation of the line, plant or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, after hearing, may make such an order prohibiting the construction or extension, or prescribing such terms and conditions for the location of the lines, plants or systems affected, as to it may seem just and reasonable.

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6. Except as provided in subsection 7, whenever the commission, after a hearing upon its own motion or upon complaint, finds that there is or will be a duplication of service by public utilities in any area, the commission shall either issue a certificate of public convenience and necessity assigning specific territories to one or to each of such utilities, or, by certificate of public convenience and necessity, otherwise define the conditions of rendering service and construction, extensions within such territories, and shall order the elimination of such duplication, all upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity.

7. The commission may allow a duplication of service by public utilities in an area if:

(a) The service provided is related to telecommunication; and

(b) It finds that the competition should occur and that any duplication of service is reasonable.

CREDIT

[Part 36 1/2:109:1919; A 1925, 243; 1947, 743; 1955, 407]--(NRS A 1959, 269; 1963, 814, 1117; 1971, 727; 1985, 1018)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

NOTES, REFERENCES, AND ANNOTATIONS

ADMINISTRATIVE REGULATIONS.

Alternative operator services, NAC 704.685-704.6888

Certificates of public convenience and necessity, public utilities, NAC 703.170-703.205

Discretionary and competitive services related to telecommunication, NAC 704.746-704.7493

WEST PUBLISHING CO.

Public Utilities k 113.

WESTLAW Topic No. 317A.

C.J.S. Public Utilities ss 4, 69, 71.

NEVADA CASES.

Municipal power district is not party in interest to enjoin sale of electric company's assets to another electric company. In action by municipal power district to enjoin electric company from selling its assets to another electric company, where municipal power district had been granted neither certificate of public convenience as provided in NRS 707.330 nor franchise to serve customers in area involved, power district was not party in interest entitled to maintain action. *White Pine Power Dist. v. Public Serv. Comm'n*, 76 Nev. 497, 358 P.2d 1 (1960), cited, *Las Vegas Valley Water Dist. v. Michelas*, 77 Nev. 171, at 181, 360 P.2d 1041 (1961)

Only municipalities which operate, maintain, construct or lease public utilities are exempt from requirement of certificate of public convenience. On municipalities which construct, lease, operate or maintain public utility are exempt under NRS 704.340 from provisions of NRS 704.330 which require

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certificate of public convenience. White Pine Power Dist. v. Public Serv. Comm'n, 76 Nev. 497, 358 P.2d 118 (1960), cited, Las Vegas Valley Water Dist. v. Michelas, 77 Nev. 171, at 181, 360 P.2d 1041 (1961)

Las Vegas Valley Water District does not require certificate of convenience and necessity. NRS 704.330, general act regulating public utilities, requires that all public utilities have certificate of convenience and necessity, but such provision has no application to Las Vegas Valley Water District organized under ch. 167, Stats. 1947, amended by ch. 402, Stats. 1957, which, by particular provision of its statute, is exempt from control under general act. Las Vegas Valley Water Dist. v. Michelas, 77 Nev. 171, 360 P.2d 1041 (1961)

ATTORNEY GENERAL'S OPINIONS.

Commission cannot prohibit operation of competing line already established. Commission cannot prohibit operation of competing line already established, but may regulate its operation so long as regulation does not amount to prohibition under guise of regulation. AGO 204 (12-31-1920)

Commission may prescribe terms different from those indicated in application. Under ch. 109, Stats. 1919 (cf. NRS 704.370), public service commission (now public utilities commission of Nevada) may prescribe terms different from those indicated in application. AGO 331 (4-30-1929)

Interstate telephone company must obtain certificate of public convenience. Notwithstanding interstate telephone company subject to Federal Communications Act, Congress has not preempted field and company must obtain certificate of public convenience required under ch. 109, Stats. 1919 (cf. NRS 704.330). AGO 559 (1-8-1948)

Radio stations are not required to obtain certificate of public convenience. Under ch. 109, Stats. 1919 (cf. NRS 704.330), radio stations are controlled by Federal Communications Act and not required to obtain certificate of public convenience. AGO 559 (1-8-1948)

Congress has reserved exclusive control over air traffic in interstate commerce. Under Federal Civil Aeronautics Act, Congress has reserved exclusive control over carriage of passengers and regulation of air traffic in interstate commerce, precluding control by state commission. AGO 559 (1-8-1948)

Commission is not empowered to examine or approve contracts entered into by power districts. Under 1931 NCL s 5180.08 (cf. NRS ch. 318 and 704.330), public service commission (now public utilities commission of Nevada) is not empowered to examine or approve contracts entered into by power districts or to grant certificates of convenience to district in its corporate capacity or otherwise. AGO 732 (3-11-1949)

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NEW MEXICO

Citation
NM ST s 63-9A-6
NMSA 1978, s 63-9A-6

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TEXT

NEW MEXICO STATUTES 1978, ANNOTATED
CHAPTER 63. Railroads and Communications
ARTICLE 9A. Telecommunications Services
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63-9A-6 Certificate required.

A. No public telecommunications service shall be offered in this state except in accordance with the provisions of the New Mexico Telecommunications Act.

B. No public telecommunications service shall be offered within this state without the telecommunications company first having obtained from the commission a certificate declaring that the operation is in the present or future [a] public convenience and necessity, unless the operation is otherwise authorized by the New Mexico Telecommunications Act.

C. The commission shall have full power and authority to determine matters of public convenience and necessity relating to the issuance of a certificate of public convenience and necessity to a provider of public telecommunications service; provided, however, that in keeping with the purposes of the New Mexico Telecommunications Act, the commission shall not deny an applicant a certificate on the grounds of need if it is shown that the applicant possesses adequate financial resources and technical competency to provide the service. It shall be within the discretion of the commission to determine when and upon what conditions plant, equipment or services may be provided under certificates of public convenience and necessity, by more than one person, and the commission may attach to the exercise of rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require or as otherwise authorized.

* D. Notwithstanding the provisions of Subsection C of this section, any telecommunications company with less than one hundred thousand access lines holding a certificate of public convenience and necessity to provide local exchange service to the public shall have the exclusive right to provide local exchange service within its certificated service territory and shall not be subject to competition in the provision of local exchange service in its certificated service territory unless the commission determines that public convenience and necessity require additional plant or equipment for the provision of local exchange service within the certificated service territory of the existing telecommunications company and a certificate of public convenience and necessity is granted pursuant to Subsection E of this section.

E. In determining whether public convenience and necessity require an additional certificate to provide local exchange service in a certificated service territory, the commission shall, in a proceeding in which the telecommunications company certificated in the affected area is a party, consider and determine upon substantial evidence that the following conditions

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exist:

- (1) the existing telecommunications company is inadequate to meet the reasonable needs and convenience of the public;
- (2) the proposed second plant or equipment would eliminate such inadequacy;
- (3) it is economically feasible to operate the proposed second plant or equipment successfully and continuously for the furnishing of local exchange service;
- (4) the applicant for the second plant or equipment has sufficient financial resources to provide the proposed local exchange service properly and continuously;
- (5) the applicant for the second plant or equipment has competent and experienced management and personnel to provide the proposed local exchange service;
- (6) the applicant for the second plant or equipment is willing and able to conform to the constitution of New Mexico and laws of New Mexico and the rules and regulations of the commission;
- (7) the applicant for the second plant or equipment is in every respect willing and able to provide the proposed local exchange service properly; and
- (8) granting the additional certificate to the applicant shall not have a significant adverse impact on the existing telecommunications company.

F. All certificates of public convenience and necessity shall:

- (1) continue in force notwithstanding the provisions of Section 63-9A-2 NMSA 1978; and
- (2) remain subject to all terms and conditions imposed by statute or commission order at the time of issuance or in connection with any subsequent amendment notwithstanding the provisions of that section.

CREDIT

History: Laws 1985, ch. 242, s 6; 1987, ch. 21, s 3.
NOTES, REFERENCES, AND ANNOTATIONS

NOTES, REFERENCES, AND ANNOTATIONS

New Mexico Telecommunications Act. -- See 63-9A-1 NMSA 1978 and notes thereto.

N. M. S. A. 1978, s 63-9A-6
NM ST s 63-9A-6
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Citation
NM ST s 63-9-9
NMSA 1978, s 63-9-9

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TEXT

NEW MEXICO STATUTES 1978, ANNOTATED
CHAPTER 63. Railroads and Communications
ARTICLE 9. Telephone and Telegraph Companies
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63-9-9 Nonduplication in certificated areas.

A. It shall hereafter be unlawful to construct, own, operate, manage, lease or control any plant or equipment for the furnishing of telephone or telegraph service contemplated by Article XI, Section 7 of the constitution of New Mexico and this act [63-9-1 to 63-9-19 NMSA 1978], in any certificated area granted to another telephone company unless public convenience and necessity shall require such second plant or equipment.

B. Any person, corporation, municipal corporation, partnership or association, proposing to construct or operate such second plant or equipment, shall first file an application with the commission, to which application the authority proposing to authorize the construction of such second plant or equipment and the owner, manager or operator of the plant or equipment then in operation shall be made parties. The applications shall set up the reasons why public convenience and necessity require such second plant or equipment. In determining whether the public convenience and necessity require such second plant or equipment the commission shall consider and determine upon substantial evidence whether the following conditions existed at the time of the filing of said application:

- (1) the existing telephone or telegraph service is inadequate to meet the reasonable needs and convenience of the public;
- (2) the proposed second plant or equipment would eliminate such inadequacy
- (3) it is economically feasible to operate the proposed second plant or equipment successfully and continuously for the furnishing of telephone or telegraph service;
- (4) the applicant for said second plant or equipment has sufficient financial resources to provide the proposed telephone or telegraph service properly and continuously;
- (5) the applicant for said second plant or equipment has competent and experienced management and personnel to provide the proposed telephone or telegraph service;
- (6) the applicant for said second plant or equipment is willing and able to conform to the constitution and law of the state of New Mexico and the rules and regulations of the commission; and
- (7) the applicant for said second plant or equipment is in every respect willing and able to provide the proposed telephone or telegraph service properly.

If the commission shall find upon substantial evidence that each of the



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foregoing conditions existed at the time of filing said application and after determining that the public convenience and necessity require that additional plant or equipment is necessary, the commission shall issue an order in the alternative directing the owner, manager or operator of the plant or equipment then in operation to make such changes and additions in plant as may be reasonably necessary to meet the public convenience and necessity within not less than ninety days, or such other additional time as the commission finds from the testimony would be reasonably required to expeditiously make the changes and additions specified and required by the commission. Such order shall specifically direct what changes or additions in plant shall be made or what services shall be provided. If such changes or additions are not made within the time ordered by the commission or such additional time as may be ordered, then a certificate of public convenience and necessity for such second plant or equipment may issue.
CREDIT

History: 1953 Comp., s 69-10-9, enacted by Laws 1965, ch. 292, s 9.
NOTES, REFERENCES, AND ANNOTATIONS

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This section is concerned with prevention of certain duplicate utility services unless the court finds that public convenience and necessity require a second plant or equipment to furnish a similar service. 1963-64 Op. Att'y Gen. No. 63-66.

Operation without franchise. -- The fact that a telephone company has operated in a county without a franchise does not limit the power of the county commission to grant a franchise to that company. The obtaining of a franchise is not mandatory, and operating without one is legal. 1963-64 Op. Att'y Gen. No. 63-66.

Am.Jur.2d, A.L.R. and C.J.S. references. -- 86 C.J.S. Telegraphs, Telephones, Radio and Television ss 74 to 76.

N. M. S. A. 1978, s 63-9-9
NM ST s 63-9-9
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**GENERAL STATUTES OF NORTH CAROLINA
CHAPTER 62. PUBLIC UTILITIES.
ARTICLE 6. THE UTILITY FRANCHISE.**

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§ 62-110 Certificate of convenience and necessity.

(a) Except as provided for bus companies in Article 12 of this Chapter, no public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to construction into territory contiguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business.

(b) The Commission shall be authorized to issue a certificate to any person applying to the Commission to offer long distance services as a public utility as defined in G.S. 62-3(23)a.6., provided that such person is found to be fit, capable, and financially able to render such service, and that such additional service is required to serve the public interest effectively and adequately; provided further, that in such cases the Commission shall consider the impact on the local exchange customers and only permit such additional service if the Commission finds that it will not jeopardize reasonably affordable local exchange service.

Notwithstanding any other provision of law, the terms, conditions, rates, and interconnections for long distance services offered on a competitive basis shall be regulated by the Commission in accordance with the public interest. In promulgating rules necessary to implement this provision, the Commission shall consider whether uniform or nonuniform application of such rules is consistent with the public interest. Provided further that the Commission shall consider whether the charges for the provision of interconnections should be uniform.

For purposes of this section, long distance services shall include the transmission of messages or other communications between two or more central offices wherein such central offices are not connected on July 1, 1983, by any extended area service, local measured service, or other local calling arrangement.

(c) The Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments. This service may be in addition to or in competition with public telephone services offered by the certificated telephone company in the service area. The access line from the pay instrument to the network may be obtained from the local exchange telephone company in the service area where the pay instrument is located, from any certificated competitive local provider, or any other provider authorized by the Commission. The Commission shall promulgate rules to implement the service authorized by this section, recognizing the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which such services shall be regulated and to the extent necessary to protect the public interest regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network.

(d) The Commission shall be authorized, consistent with the public interest and notwithstanding any other provision of law, to adopt procedures for the purpose of allowing shared use and/or resale of any telephone service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission); provided, however, that there shall be no "networking" of any services authorized under this subsection whereby two or more premises where such services are provided are connected, and provided further that the certificated local exchange telephone company shall be the only provider of access lines or trunks connecting such authorized service to the telephone network, and that the local service rates approved by the Commission for local exchange lines or trunks being shared or resold shall be fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise. Provided however, the Commission may permit or approve rates on bases other than measured or message for shared service whenever the service is offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise. The Commission shall issue rules to implement the service authorized by this subsection, considering the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services and the terms and conditions for interconnection to the local exchange network. The Commission shall require any person offering telephone service under this subsection by means of a Private Branch Exchange ("PBX") or key system to secure adequate local exchange trunks from the local exchange telephone company to assure a quality of service equal to the quality of service generally found acceptable by the Commission. Unless otherwise ordered by the Commission for good cause shown by the company, the right and obligation of the local exchange carrier to provide local service directly to any person located within its certificated service area shall continue to apply to premises where shared or resold telephone service is available, provided however, the Commission shall be authorized to establish the terms and conditions under which such services should be provided.

(e) Notwithstanding subsection (d) of this section, the Commission may authorize any telephone services provided to a nonprofit college or university, and its affiliated medical centers, which is qualified under Sections 501 and 170 of the United States Internal Revenue Code of 1986 or which is a State-owned institution, to be shared or resold by that institution on both contiguous campus premises owned or leased by the institution and noncontiguous premises owned or leased exclusively by the institution, provided these services are offered to students or guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food, or other support services directly to or for the institution, its students, or guests. The services of the certified local exchange telephone company, when provided to said colleges, universities, and affiliated medical centers shall be rated in the same way as those provided for shared service offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions as provided for in subsection (d) of this section. The institutions regulated pursuant to this subsection shall not be prohibited from electing optional services from the certificated local exchange telephone company which include measured or message rate services. There shall be no "networking" of any services authorized under this subsection whereby two or more different institutions where such services are provided are interconnected. The certified local exchange telephone company shall be the only provider of access lines or trunks connecting such authorized services to the telephone network. The Commission shall require such institutions to secure adequate local exchange trunks from the certified local exchange telephone company to assure a quality of service equal to the quality of service generally found acceptable by the Commission. Unless otherwise ordered by the Commission for good cause shown by the certified local exchange telephone company, the right and obligation of the local exchange company to provide local service directly to any person located within its certificated service area shall continue to apply to premises where shared or resold telephone service is available under this subsection, provided however, the

Commission shall be authorized to establish the terms and conditions under which such service should be provided. The Commission shall issued rules to implement the services authorized by this subsection.

(f) Reserved.

(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Each local exchange company shall be the universal service provider in the area in which it is certificated to operate on July 1, 1995, until otherwise determined by the Commission. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some

other funding mechanism. By July 1, 1998, the Commission shall complete an investigation and adopt final rules concerning the provision of universal services, the person that should be the universal service provider, and whether universal service should be funded through interconnection rates or through some other funding mechanism.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates.

(f2) The provisions of subsection (f1) of this section shall not be applicable to franchised areas within the State that are being served by local exchange companies with 200,000 access lines or less located within the State, and it is further provided that such local exchange company providing service to 200,000 access lines or less shall not be subject to the regulatory reform procedures outlined under the terms of G.S. 62-133.5(a) or permitted to compete in territory outside of its franchised area for local exchange and exchange access services until such time as the franchised area is opened to competing local providers as provided for in this subsection. Upon the filing of an application by a local exchange company with 200,000 access lines or less for regulation under the provisions of G.S. 62-133.5(a), the Commission shall apply the provisions of that section to such local exchange company, but only upon the condition that the provisions of subsection (f1) of this section are to be applicable to the franchised area and local exchange and exchange access services offered by such a local exchange company.

(f3) The provisions of subsection (f1) of this section shall not be applicable to areas served by telephone membership corporations formed and existing under Article 4 of Chapter 117 of the General Statutes and exempt from regulation as public utilities, pursuant to G.S. 62-3(23)d. and G.S. 117-35.

(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission shall be authorized, consistent with the public interest, to adopt procedures for the purpose of allowing resale of water and sewer service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission) at a rate or charge which does not exceed the actual purchase price of such service to the provider plus a reasonable administrative fee. The Commission shall issue rules to implement the services authorized by this subsection and, notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing such services and their customers under any other provision of law.

(1931, c. 455; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1983 (Reg. Sess., 1984), c. 1043, s. 2; 1985, c. 676, s. 9; c. 680; 1987, c. 445, s. 1; 1989, c. 451, ss. 1, 2; 1995, c. 27, s. 4; 1995 (Reg. Sess., 1996), c. 753, s. 1; 1997-207, s. 1.)

Cross References. -- As to necessity for certificate of convenience and necessity for housing projects, see § 157-28.

Editor's Note. -- See Editor's note under 62-133.5 regarding Session Laws 1995, c. 27, s. 6.1.

This section, as amended by Session Laws 1995, c. 27, s. 4, which added subsections (f1), (f2), and (f3), does not contain a subsection (f).

Effect of Amendments. -- The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subsection (g).

The 1997 amendment, effective July 1, 1997, in subsection (c) substituted the present third sentence for the former third sentence, concerning provision of the access line by the certified local exchange telephone company and its rates.

CASE NOTES

- I. In General.
- II. Applicability.
- III. Public Utility.
- IV. Certificate of Public Convenience and Necessity. V. Duplicate Services.

I. IN GENERAL.

The basis for the requirement of a certificate of public convenience and necessity, % h as a prerequisite to the right to serve, is the adoption, by the General Assembly, of the policy that, nothing else appearing, the public is better served by a regulated monopoly than by competing suppliers of the service. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966); State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Requirement Curtails Competition. % h - Regarding public utilities, competition, deemed unnecessary, is curtailed by the requirement that one desiring to engage in such business procure from the Utilities Commission a certificate of public convenience and necessity. In re Certificate of Need for Aston Park Hosp., 282 N.C. 542, 193 S.E.2d 729 (1973).

By this section the State has granted to the utility company a legal monopoly % h upon a service vital to the economic well-being and the domestic life of the people of a large territory. This franchise is a property right of great value. Normally, when the grantee sells its business to another company, the monopolistic franchise command a substantial price, over and above the exchange value of the physical properties transferred with it. Thus, the value of the franchise enters into and affects the market price of the utility's stock. It does not, however, enter into the computation of the utility's rate base. State ex rel. Utils. Comm'n v. General Tel. Co., 281 N.C. 318, 189 S.E.2d 705 (1972).

This State has adopted the policy of granting a telephone company a monopoly upon the rendering of telephone service % h within its service area. State ex rel. Utils. Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

But nothing in this Chapter confers upon a telephone company a monopoly upon advertising by its business subscribers. % h State ex rel. Utils. Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

Standing to Contest Application for Certificate. % h - Plaintiff utilities which, by virtue of their contiguity to subdivision were in a superior position to any other utility in the area to provide service to the development since no other competitor would be able to provide for subdivision without first obtaining a certificate, and in the event that another company sought a certificate, plaintiffs would be afforded the opportunity to contest the application, had a legitimate expectation of entitlement sufficient to give them a protectible interest so as to challenge city's provision of water to the subdivision. Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 597, 393 S.E.2d 881, 882 (1990).

Access Charge Tariff Within Authority of Commission. % h - Considering the evidence supporting the view that access charge tariff was calculated to reimburse local exchange companies



(LECs) for having to provide additional connection facilities to local networks, payments could not be viewed as mere increased revenues for the LECs, but to provide funds to set off those expenditures that the LECs were required to make to provide additional facilities to handle additional carrier access. The imposition of the access charge tariff was within the authority granted to the Commission by the 1984 amendments to this section. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 88 N.C. App. 153, 363 S.E.2d 73 (1987).

Plan for Compensation to Local Exchange Companies for Lost Revenues During Transition -- Not Invalid.% h -- Plan requiring compensation to local exchange companies for lost revenues during transition period did not violate the equal protection clause or the commerce clause, nor conflict with federal antitrust and communications objectives. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 88 N.C. App. 153, 363 S.E.2d 73 (1987).

Same -- Not a Penalty or Damages.% h -- Plan requiring compensation to local exchange companies for lost revenues during transition period did not impose a "penalty" or constitute money damages, and could more appropriately be considered as a prerequisite to receiving a certificate. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 88 N.C. App. 153, 363 S.E.2d 73 (1987).

Same -- Statutorily Authorized.% h -- Plan requiring compensation to local exchange companies for lost revenues during transition period was reasonably calculated to provide protection for the local exchange customers, and was a proper "term" or "condition" of certification which was consistent with the public interest. The plan was therefore statutorily authorized. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 88 N.C. App. 153, 363 S.E.2d 73 (1987).

Water Company "Occupies" Through Presence of Water Lines.% h -- Subsection (a) of this section requires only that a company "occupy" an area not being served by another utility. A water company "occupies" through the presence of its water lines in the territory. Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 597, 393 S.E.2d 881, 882 (1990).

Order for Cellular Carriers to Pay Access Charges Held Proper.% h -- The Utilities Commission did not err by ordering cellular carriers to pay access charges to local exchange companies when providing wide area call reception to their cellular customers. State ex rel. Utilities Comm'n v. Centel Cellular Co., 103 N.C. App. 731, 407 S.E.2d 257 (1991).

Applied in State ex rel. Utils. Comm'n v. Town of Pineville, 17 N.C. App. 522, 195 S.E.2d 76 (1973); State ex rel. Utils. Comm'n v. General Tel. Co., 17 N.C. App. 727, 195 S.E.2d 311 (1973); State ex rel. Utils. Comm'n v. General Tel. Co., 285 N.C. 671, 208 S.E.2d 681 (1974).

Stated in State ex rel. Utils. Comm'n v. Town of Pineville, 13 N.C. App. 663, 187 S.E.2d 473 (1972); Secretary of Revenue v. Carolina Tel. & Tel. Co., 81 N.C. App. 240, 344 S.E.2d 46 (1986).

Cited in State ex rel. Utils. Comm'n v. North Carolina Elec. Membership Corp., 105 N.C. App. 136, 412 S.E.2d 166 (1992).

II. APPLICABILITY.

This section does not apply to municipal corporations.% h Town of Grimesland v. City of Washington, 234 N.C. 117, 66 S.E.2d 794 (1951).

A municipal corporation in the operation of a municipally owned electric power plant with transmission lines extended to supply consumers beyond its corporate limits is not required under this section to obtain from the Utilities Commission a certificate of public convenience and necessity

before it can lawfully operate. *Town of Grimesland v. City of Washington*, 234 N.C. 117, 66 S.E.2d 794 (1951); *Pee Dee Elec. Membership Corp. v. Carolina Power & Light Co.*, 253 N.C. 610, 117 S.E.2d 764 (1961).

This section is not applicable to an electric membership corporation% h organized under the provisions of §§ 117-6 to 117-26. *Carolina Power & Light Co. v. Johnston County Elec. Membership Corp.*, 211 N.C. 717, 192 S.E. 105 (1937); *Pitt & Greene Elec. Membership Corp. v. Carolina Power & Light Co.*, 255 N.C. 258, 120 S.E.2d 749 (1961).

Certificate Not Required for Business Other Than Public Utility.% h - One does not need a certificate of public convenience and necessity in order to engage in a business which is not that of a "public utility" as defined in § 62-3(23). *State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 148 S.E.2d 100 (1966); *State ex rel. Utils. Comm'n v. Edmisten*, 40 N.C. App. 109, 252 S.E.2d 516 (1979), *aff'd in part and rev'd in part on other grounds*, 299 N.C. 432, 263 S.E.2d 583 (1980).

Nor Before City Issues Franchise.% h - Even if a television cable company is a "public utility" as defined in § 62-3, it is not required to obtain from the Utilities Commission a certificate of public convenience and necessity before a franchise is issued by a city to it. *Shaw v. City of Asheville*, 269 N.C. 90, 152 S.E.2d 139 (1967).

But Certificate Is Required Before Utility Commences Construction or Operation.% h - A certificate of public convenience and necessity from the Utilities Commission is required by this section before a public utility may commence construction of its plant or operation of its business. *Shaw v. City of Asheville*, 269 N.C. 90, 152 S.E.2d 139 (1967).

III. PUBLIC UTILITY.

The status of an entity as a public utility,% h entitled to the rights conferred by statute and subject to the jurisdiction of the Commission, does not depend upon whether it has secured a certificate of public convenience and necessity, pursuant to this section, but is determined instead according to whether it is, in fact, operating a business defined by the legislature as a public utility. *State ex rel. Utils. Comm'n v. Mackie*, 79 N.C. App. 19, 338 S.E.2d 888 (1986), *modified and aff'd*, 318 N.C. 686, 351 S.E.2d 289 (1987).

If an entity is, in fact, operating as a public utility, it is subject to the regulatory powers of the Commission, notwithstanding the fact that it has failed to comply with this section before beginning its operation. *State ex rel. Utils. Comm'n v. Mackie*, 79 N.C. App. 19, 338 S.E.2d 888 (1986), *modified and aff'd*, 318 N.C. 686, 351 S.E.2d 289 (1987).

Issuance of Certificate a Nullity If Applicant Is Not Public Utility.% h - If an applicant's proposed service is not within the definition of "public utility" contained in § 62-3(23), the issuance of a certificate of public convenience and necessity by the Commission to the applicant would be a nullity. It would not supply a basis for a further order conferring upon the applicant a right which may be granted only to a public utility. *State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 148 S.E.2d 100 (1966).

And in Excess of Commission Authority.% h - To grant a certificate of public convenience and necessity to conduct a business which is not a public utility, within the definition of the statute, would be both arbitrary and in excess of the statutory authority of the Commission. *State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 148 S.E.2d 100 (1966).

And Would Not Transform Ordinary Business into Public Utility.% h - The issuance of a

certificate of public convenience and necessity by the Commission does not transform an ordinary business into a public utility, so as to entitle its operator to the rights of a public utility, or so as to impose upon him the duties and limitations of a public utility. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Definition of Public Utility Cannot Be Extended.% h - Neither the Commission nor the Supreme Court has authority to add to the types of business defined by the legislature as public utilities. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Neither a telephone answering nor a message relaying service is a public utility% h within the purview of § 62-3(23). State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

IV. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Finding of Both Convenience and Public Need Is Required.% h - A finding by the Commission that the rendering of the proposed service by an applicant would be a convenience to the public, even if supported by competent and substantial evidence, is not an adequate basis for an order granting the applicant a certificate of public convenience and necessity. To entitle the applicant to such a certificate it is, of course, not necessary for him to show, and the Commission to find, that the proposed service is necessary in the sense of being indispensable. Nevertheless, a mere showing of convenience is not sufficient. There must be an element of public need for the proposed service by the applicant in the area. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Public Convenience and Necessity Must Require Proposed Operation.% h - The Commission is authorized to issue a certificate of public convenience and necessity if, but only if, the Commission has made findings of fact, supported by competent, material, and substantial evidence, which findings, in turn, support the conclusion that public convenience and necessity "require or will require" the proposed operation by the applicant. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966).

Evidence Held to Show Convenience and Necessity of Services.% h - Evidence before the Commission indicating that a number of the residences served by applicant's water and sewer systems were situated on quarter-acre lots, which were of insufficient size to support both a well and septic system, and that the occupants of these residences, who were currently among appellant's customers, had no alternative means of water supply or sewage disposal other than the service provided by appellant, clearly supported the conclusion not only that appellant's services constituted a convenience to that segment of the public who used them, but also that such services were necessary to the safety and health of the public. State ex rel. Utils. Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

Commission's order that appellant apply for a certificate of public convenience and necessity was unnecessary% h where the Commission had already concluded that appellant's application to abandon service should be denied. Instead, in such a case, the Commission should proceed to establish the territory to be served by appellant, issue the certificate (franchise), establish the rates to be charged for the services, and, if necessary, exercise its statutory powers and authority to compel compliance with its lawful orders. State ex rel. Utils. Comm'n v. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986), modified and aff'd, 318 N.C. 686, 351 S.E.2d 289 (1987).

The power of eminent domain is inherent in the certificate of public convenience and necessity.% h State ex rel. Utils. Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979), aff'd

in part and rev'd in part on other grounds, 299 N.C. 432, 263 S.E.2d 583 (1980).

A certificate of public convenience and necessity to render telephone service grants the right to adopt new methods% h of telephonic communications, including a mobile radio telephone service. State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

A certificate of public convenience and necessity, which authorizes its holder to render "telephone service" does not limit the holder to the practice of the art of telephony as it was known and practiced on the date the certificate was issued, nor to the use therein of devices, equipment and methods then in use. Obviously, it is the intent of such a certificate to authorize the holder to improve its service by adopting and using new and improved devices and methods for telephonic communication. State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Order Held Not to Create a Vested Property Right to Provide Service.% h - The order of the Commission relating to the provision of intraLATA service by MCI via its own facilities after January 1, 1987, did not give MCI a vested property right of which it was unconstitutionally deprived by the Commission's failure to allow facilities-based intraLATA competition on January 1, 1987. Before MCI could have the right to provide intraLATA service via its own facilities, the Commission would have to issue a certificate of authority to MCI, and the Commission could not issue this certificate without making the requisite findings of fact pursuant to subsection (b) of this section. State ex rel. Utils. Comm'n v. Public Staff, 89 N.C. App. 319, 365 S.E.2d 638 (1988).

V. DUPLICATE SERVICES.

Services Need Not Be Identical to Give Utility Serving Area Prior Right.% h -- Two services need not be identical in every respect in order to give the utility already serving the area the prior right. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 367 N.C. 257, 148 S.E.2d 100 (1966); State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Section 62-42 must be construed in connection with this section,% h which requires the issuance of a certificate of public convenience and necessity to construct new facilities except where such construction is into territory contiguous to that already occupied and not receiving similar service from another public utility. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 21 N.C. App. 182, 204 S.E.2d 27, cert. denied, 285 N.C. 596, 205 S.E.2d 726 (1974).

Thus, Commission Is Without Authority to Compel Duplicate Telephone Service.% h -- A reading of § 62-42 in pari materia with this section results in the determination that the Commission does not have the authority to compel a public utility to provide local exchange service to an area which is already receiving such service from another public utility. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 21 N.C. App. 182, 204 S.E.2d 27, cert. denied, 285 N.C. 596, 205 S.E.2d 726 (1974).

To order a telephone company to render service to an area already occupied by another telephone company would foster duplication, wastefulness, and unwarranted competition, all of which are repugnant to the avowed policy of the public utility law. State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co., 21 N.C. App. 182, 204 S.E.2d 27, cert. denied, 285 N.C. 596, 205 S.E.2d 726 (1974).

Finding Necessary for Granting Certificate to Competitor.% h - The requirement of a certificate of public convenience and necessity is not an absolute prohibition of competition between public utilities rendering the same service. There is, however, inherent in this requirement the concept that, once a certificate is granted which authorizes the holder to render the proposed service within the geographic area in question, a certificate will not be granted to a competitor in the

absence of a showing that the utility already in the field is not rendering and cannot or will not render the specific service in question. State ex rel. Utils. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966); State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

Commission Should Have Denied Application Where Proposal to Render Substantially Same Service. % h -- Where a public utility had a certificate of convenience and necessity for telephone service in a certain area and was ready and able to provide such area a mobile radio service, the Utilities Commission should have denied an application for a certificate of public convenience and necessity to an applicant who proposed to render substantially the same mobile radio service in the area; the fact that the applicant proposed to offer an electronic personal paging service as an auxiliary to its mobile radio service was not a sufficient difference to justify the issuance of the certificate, when it appeared that the Commission could compel the established utility to install such a service when the public convenience so required. State ex rel. Utils. Comm'n v. Two Way Radio Serv., Inc., 272 N.C. 591, 158 S.E.2d 855 (1968).

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DEFINITIONS; GENERAL PROVISIONS

757.005 Definitions for ORS Ch. 757

- (1)
- (a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" means:
- (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.
 - (B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.
- (b) As used in this chapter, "public utility" does not include:
- (A) Any plant owned or operated by a municipality.
 - (B) Any railroad, as defined in ORS 760.005, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.
 - (C) Any corporation not providing intrastate telecommunications service to the public in this state, whether or not such corporation has an office in this state or has an affiliated interest with a public utility as defined in this chapter.
 - (D) Any corporation, company, individual or association of individuals providing heat, light or power:
 - (i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

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- (ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;
 - (iii) From solar or wind resources to any number of customers; or
 - (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.
 - (E) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555.
 - (F) Any water utility serving less than 300 customers at an average annual residential rate of \$18 per month or less, which provides adequate and nondiscriminatory service.
 - (G) Any person acting only as a competitive telecommunications provider.
 - (H) Any corporation, company, individual or association of individuals providing only telephone customer premise equipment to the public.
- (2) Nothing in sub-subparagraph (iv) of subparagraph (D) of paragraph (b) of subsection (1) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer.
- (3) As used in this chapter:
- (a) "Competitive telecommunications provider" means a telecommunications services provider which has been classified as such by the commission pursuant to ORS 757.815.
 - (b) "Intrastate telecommunications service" means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.
 - (c) "Local exchange telecommunications service" means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commission.
 - (d) "Private telecommunications network" means a system, including the construction, maintenance or operation thereof, for the provision of telecommunications service or any portion of such service, by a person for the exclusive use of that person and not for resale, directly or indirectly.
 - (e) "Radio common carrier" means any corporation, company,

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association, joint stock association, partnership and person, their lessees, trustees or receivers, and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.

- (f) "Shared telecommunications service" means the provision of telecommunications and information management services and equipment to a user group located in discrete premises in building complexes, campuses or high-rise buildings, by a commercial shared services provider or by a users' association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to local exchange telecommunications service.
- (g) "Telecommunications service" means two-way switched access and transport of voice communications but does not include:
 - (A) Services provided by radio common carrier.
 - (B) One-way transmission of television signals.
 - (C) Surveying.
 - (D) Private telecommunications networks.
 - (E) Communications of the customer which take place on the customer side of on-premises equipment.
- (h) "Telecommunications public utility" means a public utility providing telecommunications service that has been so classified by the commission pursuant to ORS ~~757.815~~.
- (i) "Toll" means telecommunications between exchanges carried on the public switched network for which charges are made on a per-unit basis.

(4) This section does not apply to street transportation in cities of less than 50,000 population.

[Amended by 1953 c.583 §2; 1967 c.241 §1; 1967 c.314 §1; 1971 c.655 §64a; 1973 c.726 §1; 1979 c.62 §1; 1981 c.360 §1; 1981 c.749 §21; 1983 c.118 §1; 1983 c.799 §7; 1985 c.550 §1; 1985 c.633 §7; 1985 c.779 §1; 1987 c.900 §3. Note: The amendments to 757.005 by section 96, chapter 447, Oregon Laws 1987, take effect July 1, 1989. See section 143, chapter 447, Oregon Laws 1987. The text is set forth for the user's convenience.

757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" means:

- (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision

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757.005 / UTILITIES; RAILROADS AND OTHER CARRIERS

of telecommunications service, for the transportation of persons or property by street railroads or other street transportation as common carriers, or for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.

(b) As used in this chapter, "public utility" does not include:

(A) Any plant owned or operated by a municipality.

(B) Any railroad, as defined in ORS 760.005, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

(C) Any corporation, company, individual or association of individuals providing heat, light or power:

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(iii) From solar or wind resources to any number of customers; or

(iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555.

(E) Any water utility serving less than 300 customers at an average annual residential rate of \$18 per month or less, which provides adequate and nondiscriminatory service.

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(2) Nothing in sub-subparagraph (iv) of subparagraph (C) of paragraph (b) of subsection (1) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer.

(3) This section does not apply to street transportation in cities of less than 50,000 population.]

Library References

- Michie, Billing Credits for Conservation, Renewable, and Other Electric Power Resources: An Alternative to the Marginal-Cost-Based Electrical Power Rates in the Pacific Northwest, 13 Environmental L 963 (1983)
Parenteau, Regulation of Nuclear Power Plants: A Constitutional Dilemma for the States, 6 Environmental L 675 (1976)
Hodel and Wendel, The Duty and Responsibility of Oregon Public Agencies to Provide Adequate and Sufficient Electrical Utility Service, 54 Or L Rev 539 (1975)
Hallmark, Oregon's Water-Management Districts, 47 Or L Rev 16 (1967)
Hollis, Introduction to Practice and Procedure Before the Public Utility Commissioner, 1 Willamette L J 202 (1960)
Etter, A Survey of the Oregon Law on Public Ownership and Operation of Public Utilities, 25 Or L Rev 159 (1946)

Cross References

- ORS 221.420 Definitions of terms pertaining to city regulation of public utilities; authorized actions concerning regulation of public utilities
ORS 225.020 City's right to operate utilities; acquisition of property for such purpose
ORS 262.015 Cities and people's utility districts may form joint operating agencies for generation and transmission of electric power and energy
ORS 262.025 Procedure for formation of joint operating agency
ORS 268.040 Transportation facilities operated by metropolitan service district exempt from public utility regulations

ANNOTATIONS

OREGON CASES

1. In General
2. Municipal Utilities
3. Specific Instances

1. In General

The Public Utility Commissioner's (now the Public Utility Commission) choice of an alternate method in allocating increased electrical revenues is not on its own discriminatory,

unreasonable, or unjust, as the Commissioner has several alternate methods from which to choose. Thus, where substantial evidence supported the Commissioner's consideration of relative price elasticity, the result was a reasonable departure from the previous "cost of service" allocation in the adoption of new "rate spreads." *American Can Co. v Lobdell*, 55 Or App 451, 638 P2d 1152 (1982).

The Public Utility Commissioner (now

OREGON ADMINISTRATIVE RULES
CHAPTER 860, DIVISION 32 - PUBLIC UTILITY COMMISSION

(3) Except as otherwise provided, every proceeding under this Division shall follow the procedures set forth in ORS 756.500 et seq. and the Commission's rules of procedure.

(4) Any person submitting information under the Commission's rules may request that the information be held in confidence pursuant to the public records law, ORS 192.500.

Stat. Auth.: ORS Ch. 183, 756, 757 & 767

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203);

PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 1-

1990, f. & cert. ef. 2-6-90 (Order No. 90-96)

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Application for New or Amended Certificate of Authority

860-32-005 (1) No person shall provide telecommunications services within the State of Oregon except as authorized in a certificate of authority from the Commission.

(2) Any person intending to provide telecommunication services in Oregon shall file an application, on forms provided by the Commission, for a new or amended certificate of authority to provide telecommunications services. The application may include a petition to exempt services from regulation under OAR 860-32-025, or to price list services under OAR 860-32-035.

(3) An application shall contain:

(a) The name, address, and telephone number of the applicant;

(b) A description of the service the applicant seeks to provide and the territory where the service is to be offered. An application to provide local exchange services shall include a map describing the local exchange service boundaries;

(c) The names and addresses of affiliates of the applicant, as defined in ORS 759.010, which are certified to provide or are actually providing telecommunications services in Oregon;

(d) A request for classification as a public utility or competitive provider. The request shall set forth the information required under OAR 860-32-010 to classify the provider. Each applicant shall designate whether it is proposing to provide local exchange, shared or toll service.

(4) If an application, in any material respect, is incomplete, inaccurate, false or misleading, the Commission shall reject the application.

(5) Within 30 days of filing, the Commission shall serve notice of the application on all providers and all persons on the Commission's telecommunications mailing list.

(6)(a) Within 20 days of the date of service under section (5) of this rule, any affected provider or other interested person may file a protest to an application. The protest shall set forth the grounds for the protest. Failure to protest within the time limit shall be deemed consent to the application. Except as provided in subsection (7)(b) of this rule, the Commission may

require a person filing a protest to show that it is affected by the application or that its appearance and participation will not unreasonably broaden the issues or burden the record;

(b) The applicant shall serve protestants with copies of amendments and additional information submitted in the course of the application process. If an applicant intends to broaden the authority requested during the application process, it shall follow the procedures set forth in sections (2) through (6) of this rule. However, it may narrow its request by serving its amendment on each protestant.

(7)(a) Unless a hearing is held on the Commission's own motion or under subsection (b) of this section, the Commission may consider the protests and grant or deny the application without hearing. If an application is denied in whole or in part, without hearing, the Commission shall set forth in writing the reasons for the denial. Within 30 days of the date of service of the denial, the applicant may, in writing, request a hearing;

(b) If the application is to provide local exchange service, other than shared services within the service territory of a public utility, and the utility protests the application, the Commission shall hold a hearing on the application.

(8) The Commission may find an application to provide local exchange service other than shared services is in the public interest, and may grant the application, if:

(a) The public utility in whose service territory the applicant seeks to provide local exchange service consents or does not protest; or

(b) After hearing, the Commission finds the public utility in whose service territory the applicant seeks to provide local exchange service is unable to provide local exchange service. Failure by the public utility to provide reasonable and adequate local exchange service after having been ordered to do so by the Commission shall constitute inability to provide service.

(9) A certificate to provide telecommunications services shall be subject to the following conditions:

(a) The certificate holder shall provide only the telecommunications services authorized in the certificate;

(b) The certificate holder shall not abandon service except as authorized under the Commission's rules;

(c) For public utilities, the records and books of the certificate holder are open to inspection by the Commission, and shall be maintained according to the Commission's rules;

(d) For competitive providers, the books and records of the certificate holder shall be open to inspection by the Commission to the extent necessary to verify information required of the certificate holder by the Commission's rules. The books and records shall be maintained according to generally accepted accounting principles and the applicable rules of the Commission;

(e) The certificate holder agrees to pay all access charges and subsidies imposed pursuant to the Commission's rules;

(f) The certificate holder involved in the provision of an operator service shall:

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(A) Notify all callers at the beginning of each call of the telecommunications provider's name; however, a local exchange telephone company providing operator services for another local exchange telephone company may "brand" the call by identifying the other local exchange company.

(B) Disclose rate and service information to the caller when requested;

(C) Maintain a current list of emergency numbers for each service territory it serves;

(D) Transfer an emergency call to the appropriate emergency number when requested, free of charge;

(E) Transfer a call to, or instruct the caller how to reach, the originating local exchange company's operator service upon request of the caller, free of charge;

(F) Not transfer a call to another operator service provider without the caller's notification and consent;

(G) Not bill or collect for calls not completed to the caller's destination;

(H) Not screen calls and prevent or "block" the completion of calls which would allow the caller to reach an operator service company different from the certificate holder. In addition, the certificate holder shall, through contract provisions with its call aggregator clients, prohibit the blocking of a caller's access to his or her operator service company of choice. A certificate holder may apply for a waiver from the Commission if necessary to prevent fraudulent use of its services.

(g) Telecommunications providers who enter into operator service contract or arrangements with call aggregators shall include in those contracts or arrangements provisions for public notification as follows:

(A) A sticker or name plate identifying the name of the certificate holder shall be attached to each telephone available to the public;

(B) A brochure, pamphlet, or other notice shall be available in the immediate vicinity of the telephone giving the name of the operator service provider, stating that rate quotes are available upon request, listing a toll-free telephone number for customer inquiry, and giving instructions on how the caller may access other operator service providers.

(h) Competitive providers may contract with local telephone utilities for customer billing and collection under the following conditions:

(A) The telephone utility, in billing for the competitive provider, shall include on the bill the name of a company with the information and authority to provide information and resolve disputes about billing entries, a toll-free number to reach that company, and details of the services and charges billed;

(B) The telephone utility shall not deny telephone service to customers for failure to pay charges for competitive provider services or unregulated utility services.

(i) The certificate holder agrees to comply with the Commission's rules applicable to the certificate holder; and

(j) A public utility shall meet the service standards for regulated services set forth in the Commission's rules.

(10) Cooperative corporations organized under ORS Chapter 62 are not subject to ORS 759.015, et seq. or Division 32 of the Commission's rules. Nothing in Division 32 shall have any effect on the integrity of a cooperative's territorial allocation granted under ORS 758.400 et seq.

Stat. Auth.: ORS Ch. 183, 756, 757, 759 & 767

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986, f. & ef. 11-17-86 (Order No. 86-1159); PUC 10-1989(Temp), f. & cert. ef. 7-10-89 (Order No. 89-847); PUC 1-1990, f. & cert. ef. 2-6-90 (Order No. 90-96); PUC 23-1990, f. & cert. ef. 12-31-90 (Order No. 90-1918); PUC 9-1991, f. & ef. 7-16-91 (Order No. 91-854)

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Classification of Applicants

860-32-010 (1) There shall be two classifications of telecommunications providers:

(a) Public utility; and

(b) Competitive services provider.

(2) If the provider qualifies under section (4) of this rule, the Commission shall classify the applicant as a competitive provider.

(3) The Commission shall classify all other providers as public utilities.

(4) To qualify as a competitive provider, the certificate holder shall demonstrate that the only services it offers are subject to competition or that its customers or those proposed to be customers have available alternatives. Pursuant to OAR 860-32-045, shared services are competitive. In determining the nature of the services the certificate holder provides, the Commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(c) Existing economic or regulatory barriers to entry;

(d) Any other factors deemed relevant by the Commission.

(5) Any provider may file a petition with the Commission under OAR 860-32-005 and this rule to change its classification. On the Commission's own motion and after notice and opportunity for hearing, the Commission may change a provider's classification upon a finding that the provider no longer qualifies for the classification previously assigned, or qualifies for a different classification.

Stat. Auth.: ORS Ch. 756

Hist.: PUC 27-1985(Temp), f. & ef. 12-19-85 (Order No. 85-1203); PUC 16-1986 f. & ef. 11-17-86 (Order No. 86-1159)

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UTAH CODE, 1953
TITLE 54. PUBLIC UTILITIES
CHAPTER 8b. PUBLIC TELECOMMUNICATIONS LAW
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Current through End of 1998 General Session

54-8b-2.1 Competitive entry.

(1) Notwithstanding any provision of Section 54-4-25 to the contrary, the commission may issue a certificate to a telecommunications corporation authorizing it to compete in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation, except until December 31, 1997, a telecommunications corporation may not receive a certificate to compete in providing local exchange service within any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state. The procedure specified in Subsection (3)(c) for excluding competition within a local exchange with fewer than 5,000 access lines shall apply on December 31, 1997 or thereafter.

(2) The commission shall issue a certificate to the applying telecommunications corporation if the commission determines that:

(a) the applicant has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for; and

(b) the issuance of the certificate to the applicant is in the public interest.

(3) (a) The commission shall process the application in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(b) Each telecommunications corporation holding a certificate to provide public telecommunications service within the geographic area where an applicant is seeking to provide telecommunications service shall be provided notice of the application and granted automatic status as an intervenor.

(c) An intervening incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the commission to exclude from an application filed pursuant to Subsection (1) any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. Upon finding that the action is consistent with the public interest, the commission shall order that the application exclude such local exchange.

(d) The commission shall approve or deny the application under this section within 240 days after it is filed. If the commission has not acted on an application within 240 days, the application is considered granted.

(4) If the commission issues a certificate to a competitive telecommunications corporation to provide local exchange services in a local exchange that has fewer than 5,000 lines and that is controlled by an incumbent

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telephone corporation with fewer than 30,000 access lines in the state, the commission shall impose an obligation upon the competitive telecommunications corporation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange. The competing telecommunications corporation's obligation to serve shall be no greater than that of the incumbent telephone corporation.

(5) An incumbent telephone corporation with fewer than 30,000 access lines in the state may not be required to become a carrier of intrastate toll services.
CREDIT

History: C. 1953, 54-8b-2.1, enacted by L. 1995, ch. 269, s 5.
NOTES, REFERENCES, AND ANNOTATIONS

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Effective Dates. --Laws 1995, ch. 269 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

U.C.A. 1953 s 54-8b-2.1
UT ST s 54-8b-2.1
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